

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA



**FILED**

02/06/26

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A2412003

Joint Application of Southern California  
Edison Company (U 338-E) and San Diego  
Gas & Electric Company (U 902-E) For the  
2024 Nuclear Decommissioning Cost  
Triennial Proceeding.

Application 24-12-003

**REPLY BRIEF OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E)**  
**AND SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E)**

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Dated: **February 6, 2026**

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Pursuant to Rule 13.12 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission) and Administrative Law Judge Andrea D. McGary’s December 2, 2025 Ruling Regarding Document Only Evidence Process and Briefing Schedule, Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) (collectively, “Utilities”) submit this Reply Brief in the 2024 Nuclear Decommissioning Cost Triennial Proceeding (NDCTP).

Intervenors Alliance for Nuclear Responsibility (A4NR), The Utility Reform Network (TURN), and the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submitted opening briefs opposing aspects of the San Onofre Nuclear Generating Station (SONGS) Decommissioning Cost Estimates (DCEs) for SONGS Unit 1 and SONGS Units 2&3. In addition, TURN and Cal Advocates oppose the Utilities depositing proceeds of litigation with the Department of Energy (DOE) into their non-qualified nuclear decommissioning trusts (NDTs), which was authorized in Decision (D.) 24-08-001. The Utilities already addressed many of the intervenors’ arguments in their Opening Brief, and do not repeat

those arguments here. In this Reply Brief, the Utilities focus on new arguments advanced by intervenors in their opening briefs.

## I.

### **RESPONSE TO THE ALLIANCE FOR NUCLEAR RESPONSIBILITY**

#### **A. The DCE’s Assumed Date for the Removal of Spent Nuclear Fuel Is Reasonable and Consistent with Longstanding Commission Practice**

In its opening brief, A4NR attacks the assumptions in the SONGS Units 2&3 DCE that the DOE will begin removing spent nuclear fuel (SNF) and Greater than Class C waste from the SONGS site in 2034 and that all SNF will be removed by 2054, claiming the assumptions “contradict the core findings from SCE’s March 15, 2021 Strategic Plan for the Relocation of SONGS Spent Nuclear Fuel to an Offsite Storage Facility or a Repository (SNF Strategic Plan).”<sup>1</sup> A4NR incorrectly implies the SNF Strategic Plan contradicts the opinions of the Utilities’ decommissioning experts and that the DCE’s assumptions are unreasonable.<sup>2</sup>

A4NR misstates the purpose of the SNF Strategic Plan, which is not to review the DCE’s assumptions or identify potential dates for removing SNF from the SONGS site.<sup>3</sup> As explained in the plan’s summary:

The goal of this Strategic Plan was to develop insights and information concerning commercially reasonable pathways for moving SNF off site and, if such pathways currently do not exist, to identify efforts that might be taken, through coalitions and partnerships, to help catalyze action and ensure that the SONGS co-owners are ready to act as circumstances warrant.<sup>4</sup>

The plan addresses the hurdles to prompt removal of SNF from the SONGS site, as A4NR cites in its opening brief, but the purpose of doing so is not to cast doubt on the DCE; it is

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<sup>1</sup> A4NR Opening Brief, p. 1.

<sup>2</sup> See A4NR Opening Brief, pp. 1-2. “Rather than heed the input from SCE’s experts, both utilities have mechanically added three years to their prior estimates to reflect the lack of progress on this issue since the last NDCTP three years ago.” A4NR Opening Brief, pp. 2-3.

<sup>3</sup> Ex. A4NR-01, Bates 0034 (Ex. A4NR-01, p. v).

<sup>4</sup> Ex. A4NR-01, Bates 0044 (Ex. A4NR-01, p. xv).

to ensure that the various stakeholders make a sober assessment of the challenges in removing SNF:

In contrast to most prior studies that have analyzed the issue of SNF management and disposition from a national perspective, this Strategic Plan offers a perspective on the challenges created by the breakdown of the federal program from the vantage point of the utility owner of SNF seeking a safe, commercially reasonable, and prudent path forward in the face of long planning timeframes and large uncertainties that are beyond the utility owner's control.<sup>5</sup>

A4NR focuses exclusively on the SNF Strategic Plan's identification of hurdles to early removal of the SNF,<sup>6</sup> while ignoring the identified factors that could spur earlier government action. These include a "growing motivation for action nationwide" on identifying offsite SNF storage solutions,<sup>7</sup> the continuing financial impact to taxpayers of continuing to fund damage payments to Utilities,<sup>8</sup> and recent congressional "funding for DOE to initiate new R&D efforts in SNF management."<sup>9</sup>

On the key question of when a federal disposal repository may be established, the SNF Strategic Plan concludes it is "virtually impossible to estimate."<sup>10</sup> In light of this continued uncertainty, it is prudent to continue the accepted Commission and industry practice of assuming in the DCEs that the DOE will begin to remove SNF in ten years.<sup>11</sup> "This approach does not unreasonably inflate the DCE based on speculation," and is eminently reasonable where, as here, ***no party has suggested a reasonable alternative assumption.***<sup>12</sup> Indeed, A4NR's scattershot approach to estimating SNF removal timelines – it seeks inclusion of 60-year (post plant shutdown), 110-year, and 160-year storage scenarios in the DCE – highlights the fact that it does not have a single better alternative assumption for the start of SNF removal than continuing the Commission's historical practice of assuming ten years from the date of the DCE. It is

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<sup>5</sup> *Id.*

<sup>6</sup> A4NR Opening Brief, pp. 1-2.

<sup>7</sup> Ex. A4NR-01, Bates 0048 (Ex. A4NR-01, p. xix).

<sup>8</sup> Ex. A4NR-01, Bates 0049 (Ex. A4NR-01, p. xx).

<sup>9</sup> Ex. A4NR-01, Bates 0185 (Ex. A4NR-01, p. 129).

<sup>10</sup> Ex. A4NR-01, Bates 0136 (Ex. A4NR-01, p. 80).

<sup>11</sup> *See* The Utilities' Opening Brief, pp. 12-13.

<sup>12</sup> *Id.*, quoting D.21-12-026, p. 60.

inconsistent with the purpose of the DCE – to provide realistic and accurate assumptions for decommissioning costs – to include multiple, speculative SNF removal scenarios. Because the DCE is used to determine whether trust fund balances are adequate to support decommissioning, and whether customer contributions to the trusts need to be restarted, it is important that the DCE include a single, primary estimate for SNF removal.

Despite their opposition to A4NR’s SNF assumptions, the Utilities share A4NR’s skepticism that the DOE will begin to remove SNF from the SONGS site in 2034. However, the appropriate way to address this skepticism is by ensuring a funding stream will be available to cover SNF management costs in the event the DOE continues to delay. The Commission identified this funding stream – DOE litigation proceeds – in D.24-08-001, where it authorized the Utilities to deposit the litigation proceeds in their NDTs. The Commission should continue that authorization in this proceeding.

**B. A4NR’s Proposed Alternative Funding Analyses Should Be Rejected**

The Utilities oppose A4NR’s proposal to model 60-year, 110-year, and 160-year SNF scenarios because the scenarios are speculative (they are not based on estimated SNF storage periods), burdensome to perform (corresponding funding streams would need to be identified) and would not identify information useful to the DCE or NDCTP.<sup>13</sup> A4NR claims the analyses would “better identify when additional funding from the trusts is likely to prove necessary and in what amounts.”<sup>14</sup> But record evidence already clearly identifies that adequate funding may not be available if SNF remains on the site beyond 2054.<sup>15</sup> For SCE, there is a funding margin of only \$85 million for SONGS Unit 2,<sup>16</sup> and an annual cost of SNF management of approximately \$22 million.<sup>17</sup> Thus, based on current forecast cost assumptions and cost estimates, SCE would

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<sup>13</sup> Ex. 0009, Bates Nos. 1140-1141 (Ex. SCE-09, pp. 16-17).

<sup>14</sup> A4NR Opening Brief, p. 6.

<sup>15</sup> Ex. 0009, Bates No. 1156 (Ex. SCE-09, p. 32).

<sup>16</sup> *Id.*

<sup>17</sup> The Utilities’ Opening Brief, p. 23.

be able to support Unit 2 SNF on the site for less than four years beyond 2054, assuming the NDT funds are adequate to support other Unit 2 decommissioning activities. Performing A4NR's additional, speculative analyses would not provide any more useful information than this and would only serve to show a large SNF management spending deficit – precisely the type of unreasonable DCE inflation the Commission warned against in D.21-12-026.<sup>18</sup>

In contrast to A4NR's speculative proposals, the Utilities have proposed to include a modified version of a 60-year analysis in the next DCE.<sup>19</sup> This analysis is useful because it will include the Round 5 litigation proceeds as a funding stream. The Commission should accept this reasonable proposal and reject A4NR's speculative alternatives.

**C. The Utilities Agree to Identify Queue Assumptions in the Next DCE**

A4NR claims “SCE has kept its specific assumptions about operation of the DOE queue opaque.”<sup>20</sup> The Utilities reject that assertion: the DCE's SNF assumptions were adjusted consistent with historical NDCTP practice, and they have been the subject of much litigation in this and in prior NDCTPs. However, in response to A4NR's request that specific assumptions be identified in future DCEs, the Utilities agree to identify the assumptions used to develop the timing and amounts of SNF removed from the SONGS site and from the Morris site in the next DCE, which will be submitted in the 2027 NDCTP.<sup>21</sup>

**D. The Settlement Scenario Should Not Be Included in the Next DCE**

As the Utilities explained in their Opening Brief, and as the record evidence reflects, there is no good reason to include the Settlement Scenario in the next DCE: it is more costly than the Operational Scenario, has negative environmental impacts, and does not reflect the

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<sup>18</sup> D.21-12-026, p. 60 (“We find reasonable SCE's approach of adjusting its assumptions for the DOE start date based on the amount of time passed since the last DCE. This approach does not unreasonably inflate the DCE based on speculation.”)

<sup>19</sup> The Utilities' Opening Brief, p. 14; Ex. 0009, Bates Nos. 1140-1141 (Ex. SCE-09, pp. 16-17).

<sup>20</sup> A4NR Opening Brief, p. 5.

<sup>21</sup> See The Utilities' Opening Brief, pp. 14-15, fn. 63.

decommissioning strategy actually being implemented by the Utilities.<sup>22</sup> To provide an accurate, realistic estimate of the anticipated costs to complete SONGS decommissioning, only the Operational Scenario should be included in the next DCE.

A4NR now claims the Operational Scenario amounts to “an open-ended delay in the commencement of [Units 2 & 3] substructures removal”<sup>23</sup> and implies that Special Condition 3 of Coastal Development Permit (CDP) 9-19-0194 somehow requires SCE to remove the Units 2&3 subsurface structures promptly, in a separate campaign from the Unit 1 substructures.<sup>24</sup> A4NR is wrong on both counts. First, the Utilities are not claiming an “open-ended delay” in commencing subsurface structure removal: the Operational Scenario includes removal of all subsurface structures beginning in 2051.<sup>25</sup> This date will likely be extended to 2054 in the next DCE if the DOE continues to delay. And second, Special Condition 3 imposes no timing requirement on the removal of subsurface structures. SCE clearly explained its obligations under the special condition in the DCE:

In accordance with CDP Special Condition 3, SCE will submit a CDP amendment application by June 1, 2028 that includes the proposed removal, to the extent feasible, of all remaining onshore structures at SONGS that may be exposed in the future due to coastal processes or that otherwise would have coastal impacts if they were to remain. ***CDP Special Condition 3 does not require SCE to propose removal within a particular timeframe.***<sup>26</sup>

A4NR’s attempt to insert a timing requirement into Special Condition 3 should be rejected. The Utilities have satisfied their obligation from the Settlement Agreement approved in D.24-08-001 by including the Settlement Scenario in this NDCTP. There is no good reason for continuing to include the speculative scenario in future DCEs.

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<sup>22</sup> See The Utilities’ Opening Brief, pp. 10-12.

<sup>23</sup> A4NR Opening Brief, p. 10.

<sup>24</sup> E.g., A4NR Opening Brief, pp. 8-9 (“It was SCE’s farfetched reading of Special Condition 3 to CDP 9-19-0194 (as inviting open-ended deferral of substructures removal until all SNF has left the SONGS site) that prompted the Settlement Scenario.”).

<sup>25</sup> Ex. 0004, Bates No. 0342 (Ex. SCE-04, p. 35).

<sup>26</sup> Ex. 0004, Bates No. 0418 (Ex. SCE-04, Appendix B (SONGS 2024 DCE), p. B-33) (emphasis added).

## II.

### RESPONSE TO TURN

#### A. The Contingency Factor Applied to the Decommissioning General Contractor in the SONGS 2&3 DCE Is Reasonable

The contingency factor applied to the Decommissioning General Contractor's (DGC) work in the SONGS 2&3 DCE is consistent with the 10% contingency authorized in D.24-08-001 plus an adjustment to reflect known costs of resolving the DGC's COVID-19 claims.<sup>27</sup> In its opening brief, TURN claims SCE has not explained "why the 10% contingency factor included in the settlement adopted in D.24-08-001 is insufficient to cover [the COVID-19 claims]."<sup>28</sup> This is incorrect. The Utilities' Opening Brief summarizes the record evidence demonstrating the 10% contingency is needed to address existing risks, excluding resolution of the DGC's COVID-19 claims.<sup>29</sup> The record contains detailed explanation of the risks SCE retains under the fixed-price DGC agreement that continue to the present day.<sup>30</sup>

TURN goes on to claim that SCE provides no documentation to support the argument "that it properly relied on the conclusions reached by its outside contractors to develop the proposed contingency factor."<sup>31</sup> This is also incorrect. Record evidence demonstrates "[t]he approved contingency amount to cover continuing risks (10%) was identical to the amount developed by HKA and reviewed and approved by ABZ."<sup>32</sup> The record also describes HKA's process of developing the 10% contingency factor, and explains that HKA recommended *reducing* the 15% contingency it recommended in the last DCE (the 2021 DCE) to 10%.<sup>33</sup> As in the 2021 DCE, the Utilities have adopted HKA's recommendation for a base contingency; SCE

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<sup>27</sup> The Utilities' Opening Brief, pp. 17-18.

<sup>28</sup> TURN Opening Brief, p. 2.

<sup>29</sup> The Utilities' Opening Brief, pp. 18-19.

<sup>30</sup> Ex. 0009, Bates Nos. 1148-1151 (Ex. SCE-09, pp. 24-27).

<sup>31</sup> TURN Opening Brief, p. 3.

<sup>32</sup> Ex. 0009, Bates No. 1149 (Ex. SCE-09, p. 25).

<sup>33</sup> Ex. 0004, Bates No. 0448-449 (Ex. SCE-04, Appendix B (SONGS 2024 DCE), pp. B-63 to B-64).

directed HKA to increase the base contingency solely to account for the known cost of resolving COVID-19 claims.<sup>34</sup>

TURN proposes a new alternative DGC contingency in its opening brief: a base DGC contingency of 8%, which was ordered in the 2018 NDCTP, plus an adjustment to reflect resolution of the COVID-19 claims.<sup>35</sup> Although TURN's new proposal is more reasonable than its original proposal, it is still insufficient to cover the remaining risks for the DGC's scope of work. The Utilities continue to support their original contingency proposal.

**B. TURN Does not Provide Persuasive New Arguments for Adjusting the SONGS Unit 1 DCE**

TURN continues to recommend adjusting the SONGS Unit 1 DCE, largely based on the variance between recorded spending from 2021 to 2023 and HKA's estimation of the costs that will be incurred over the remaining decades of the decommissioning project.<sup>36</sup> The Utilities explained in their Opening Brief, and cited the record evidence demonstrating, that it is unreasonable to base long term forecasts on near term results because doing so fails to account for unknown conditions and changed circumstances that may occur over the life of the project.<sup>37</sup> For these reasons, TURN's proposed adjustments should not be adopted in this NDCTP.

**1. Labor Staffing Costs**

TURN complains that the increased contingency for labor staffing costs of 10% beginning in 2029 is inappropriate because the "DCE does not forecast any real increase in annual labor staffing costs through 2035" and does identify a particular risk that would cause costs to increase.<sup>38</sup> TURN misunderstands the purpose of contingency. When future cost

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<sup>34</sup> Ex. 0004, Bates No. 0321 (*E.g.*, Ex. SCE-04, p. 14).

<sup>35</sup> TURN Opening Brief, p. 5.

<sup>36</sup> TURN Opening Brief, p. 6. The appropriate adjustment to reflect resolution of the COVID-19 claims is confidential, and is provided in the Utilities' confidential Opening Brief, at page 19.

<sup>37</sup> The Utilities' Opening Brief, pp. 4-8.

<sup>38</sup> TURN Opening Brief, p. 8.

increases are known, they are included in the DCE as base costs, and not as an increase in contingency. Contingency is included to account for unknown impacts over the life of the decommissioning project.<sup>39</sup> SCE does not know the staffing plans, roles, or the reporting structure that will be implemented in 2029.<sup>40</sup> In light of this uncertainty, a 10% contingency is appropriate to include in this DCE. As SCE stated in rebuttal, [f]ollowing the completion of Phase II, currently anticipated to be in 2028, additional information regarding future staffing requirements may be known and an adjustment to the labor staffing contingency as TURN suggests may be appropriate.”<sup>41</sup>

## **2. Offshore Lease Agreement and Surety Bond**

TURN suggests the 15% contingency applied to the SONGS 1 offshore lease agreement between SCE and the California State Lands Commission (CSLC) and the related surety bond should be reduced because the DCE already includes a cost increase in future years, in the form of a Consumer Price Index (CPI)-based increase in the annual rent.<sup>42</sup> TURN ignores that the CPI adjustment is included to reflect known increases in the base rent.<sup>43</sup> Again, contingency, in contrast, “is applied to cost estimates to account for unknown or unplanned occurrences during the performance of a project.”<sup>44</sup>

The lease agreement allows the CSLC to set a new base rent every five years, and in 2035 SCE and the CSLC must negotiate a new lease, whose terms are currently unknown.<sup>45</sup> A prior renegotiation of the lease resulted in a significant increase in costs (approximately \$200,000 (100% share, 2014\$) per year) due to an increase in the base rent and CSLC’s imposition of the

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<sup>39</sup> Ex. 0009, Bates No. 1130 (Ex. SCE-09, p. 6).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> TURN Opening Brief, p. 9.

<sup>43</sup> *See* Ex. 0009, Bates No. 1131 (Ex. SCE-09, p. 7). TURN does not identify a more appropriate post-2027 CPI factor than the 3% forecast in the DCE.

<sup>44</sup> Ex. 0004, Bates No. 0316 (Ex. SCE-04, p. 9).

<sup>45</sup> Ex. 0009, Bates No. 1131 (Ex. SCE-09, p. 7).

surety bond requirement.<sup>46</sup> TURN claims there “is no basis for assuming that CSLC will require a second surety bond” in 2035,<sup>47</sup> but this misses the point on two counts. First, TURN makes the unsupported assertion that the \$200,000 (100% share, 2014\$) increase “resulted primarily” from the surety bond requirement.<sup>48</sup> The \$200,000 (100% share, 2014\$) increase resulted from both the surety bond and the increase in base rent, but the evidentiary record does not reflect the breakdown between the two.<sup>49</sup> And second, the fact the CSLC imposed a bond requirement in the past does not necessarily mean a new bond will be required, but it is indication that new, unforeseen costs may arise that the Utilities are unable to predict. Even if new unforeseen costs do not arise, it is possible the base rent could increase substantially (which would not be unexpected for a property lease in coastal California). California’s evolving, dynamic regulatory and environmental landscape adds to the uncertainty.<sup>50</sup> In light of the long-term nature of the costs (the lease is expected to be in place as long as the offshore conduits are) and the uncertainty, the 15% contingency is appropriate.

### 3. Security Overtime and NRC Inspection Hours

TURN claims the 2020 DCE overestimated security overtime costs in the 2021-2023 period and that, as a result, a different estimation methodology should be adopted in the 2024 DCE.<sup>51</sup> But the DCE forecasts costs over a multi-decade planning period; TURN provides no explanation for why 2021-2023 costs should be considered determinative for forecasting over the entire period. Regardless, the Utilities agreed to re-examine their estimation methodology and

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<sup>46</sup> *Id.*

<sup>47</sup> TURN Opening Brief, p. 10.

<sup>48</sup> *Id.*

<sup>49</sup> TURN’s assertion appears to be based on an SCE discovery response identifying *nominal* annual bond costs of \$190,987 in 2024 and 2025. *See* Ex. TURN-306, Bates 306-012. But the \$200,000 increase attributable to the recent renegotiation of the lease is in **2014 dollars**. *See* Ex. 0009, Bates No. 1131 (Ex. SCE-09, p. 7). TURN’s failure to convert nominal dollars to common year, 2014 dollars is not unique to the lease and surety bond issue; it also undermines TURN’s analysis of the DOE litigation proceeds, as addressed in Section II.3.

<sup>50</sup> Ex. 0009, Bates No. 1131 (Ex. SCE-09, p. 7).

<sup>51</sup> TURN Opening Brief, p. 12.

will consider adopting TURN's methodology in the next DCE.<sup>52</sup> At that point, there will be an additional three years of security overtime recorded costs to consider. It is premature to adjust the DCE now based solely on 2021-2023 recorded costs.

TURN applies the same logic to NRC inspection hours, claiming estimated costs in the DCE should be reduced to reflect recorded 2021-2023 costs.<sup>53</sup> The Utilities also agree to review the estimate for these costs in the next DCE.<sup>54</sup> Adjusting them here based solely on three years of recorded data would be premature and inappropriate.

#### **4. Insurance Credit Rating Plan (ICRP) Credits and Contracted Services Expense**

TURN claims that SCE received "significant ICRP credits in 8 out of the last 9 years" and that the DCE should assume a credit equal to this nine year average will be received in all future years.<sup>55</sup> TURN also claims that ICRP credits are similar to Nuclear Energy Insurance Limited (NEIL) dividends, a portion of which were reflected in DCEs prior to adoption of the Settlement Agreement in D.24-08-001.<sup>56</sup> The Utilities disagree with TURN's claim that an average ICRP credit should be assumed in future years, because the credits fluctuated greatly from 2015 to 2023, from \$0 to \$130,000.<sup>57</sup> However, TURN's point regarding NEIL dividends is well taken. The Utilities will review the NEIL dividend credits that were historically reflected in the DCEs and, beginning with the 2027 DCE, will propose a similar adjustment for the ICRP credits.

For contracted services expense, TURN claims recorded costs over the 2021-2023 period should be considered determinative of all future costs.<sup>58</sup> TURN claims the 2021-2023 recorded

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<sup>52</sup> The Utilities' Opening Brief, pp. 8-9.

<sup>53</sup> TURN Opening Brief, pp. 12-13.

<sup>54</sup> The Utilities' Opening Brief, pp. 8-9.

<sup>55</sup> TURN Opening Brief, p. 14.

<sup>56</sup> *Id.*

<sup>57</sup> The Utilities' Opening Brief, pp. 5-6.

<sup>58</sup> TURN Opening Brief, pp. 15-16.

costs were lower than estimated in the 2020 DCE, and that its simple estimation methodology “corrects for these past mistakes.”<sup>59</sup> Forecasted costs may be higher or lower than recorded costs over a three-year period; in fact, they are *expected* to deviate from recorded costs, especially over a short period. But this does not mean short term recorded costs should form the basis for cost estimation over the multi-decade DCE period absent a showing that the short term is somehow indicative of the full planning period. Because TURN makes no such showing here, its proposal should be rejected and the more robust estimation methodology employed by HKA—which included project-specific details, interviews with subject matter experts, and a re-evaluation in each DCE<sup>60</sup>—should be adopted.

### C. DOE Litigation Proceeds

TURN misstates the legal standard applicable to the Commission’s review of its proposal regarding DOE litigation proceeds. In the last NDCTP, the Utilities, TURN, Cal Advocates, and A4NR fully litigated the Utilities’ proposal to deposit proceeds from SNF litigation with the DOE in their non-qualified NDTs. This was the only issue between the parties that was fully litigated in that proceeding, and the Commission ruled in the Utilities’ favor.<sup>61</sup> TURN is now seeking to re-litigate the exact same issue in this NDCTP.<sup>62</sup> This is an improper collateral attack on D.24-08-001 and, at least with regard to the Round 5 DOE litigation proceeds, is outside the scope of this proceeding and should be rejected.<sup>63</sup> To the extent the disposition of post-Round 5 litigation proceeds is addressed in this proceeding, TURN bears the burden of proof and the burden of persuasion because it seeks to reverse the Commission decision reached less than two years ago. TURN’s attempt to place these burdens on the Utilities should be rejected.<sup>64</sup>

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<sup>59</sup> TURN Opening Brief, p. 16.

<sup>60</sup> Ex. 0009, Bates No. 1132 (Ex. SCE-09, p. 8).

<sup>61</sup> D.24-08-001, COL 10, p. 36.

<sup>62</sup> Cal Advocates also seeks to relitigate the issue, but it proposes litigation proceeds be split 50/50 between customers and the NDTs.

<sup>63</sup> See The Utilities’ Opening Brief, pp. 22-24.

<sup>64</sup> See TURN Opening Brief, pp. 16-17.

## 1. The Utilities Complied with D.24-08-001

D.24-08-001 directed the Utilities to, in the instant proceeding, “compare the forecasted decommissioning costs, with the forecasted spent fuel storage costs included, against the forecasted Non-Qualified Decommissioning Trust fund balances, with the amount of DOE litigation proceeds received included[.]”<sup>65</sup> TURN claims the Utilities did not comply with this requirement because their comparison did not include proceeds from litigation Round 5 or Round 6.<sup>66</sup> There is good reason why the Utilities did not include this information: *no Round 5 or Round 6 litigation proceeds had been received when the analysis was performed*. The Round 5 and Round 6 proceeds still have not been received. In compliance with D.24-08-001, the Utilities provided a comparison of forecasted decommissioning costs and the trust balances as of mid-2024<sup>67</sup> and year end 2023,<sup>68</sup> when they began preparing the Joint Application. The Utilities proposed to file supplemental testimony updating the comparison analysis when Round 5 DOE litigation proceeds were received, but the Commission rejected this proposal in the Scoping Memo.<sup>69</sup> Under these circumstances, it would be absurd and fundamentally unfair to find the Utilities failed to comply with D.24-08-001.<sup>70</sup>

TURN goes on to claim that DOE litigation proceeds associated with SNF management at other nuclear plants (Palo Verde, Diablo Canyon, and Humboldt Bay) are not deposited in those plants’ NDTs, and that the Utilities have not “presented any specific evidence to justify this unique treatment for SONGS.”<sup>71</sup> TURN does not explain why these other plants are relevant to

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<sup>65</sup> D.24-08-001, OP 5(d), p. 37.

<sup>66</sup> TURN Opening Brief, pp. 18-19.

<sup>67</sup> *E.g.*, Ex. 0007 (Ex. SCE-07).

<sup>68</sup> Ex. 0104 (Ex. SDGE-04).

<sup>69</sup> *See* The Utilities’ Opening Brief, p. 24, fn. 121.

<sup>70</sup> The Utilities note that an analysis for Round 5 and Round 6 proceeds is not required to find a continuing need to deposit litigation proceeds in the NDTs. The need for the additional funds is driven by the continued uncertainty in the DOE’s ability to begin accepting SNF. The record demonstrates the continuing uncertainty. In addition, the record reflects that additional funds are required to be added to the NDTs if the DOE delays beyond the SNF removal dates assumed in the DCE. *See e.g.*, The Utilities’ Opening Brief, p. 23.

<sup>71</sup> TURN Opening Brief, p. 21.

SONGS. Two of the plants—Palo Verde and Diablo Canyon—are still in operation, meaning they are not funding SNF management from their NDTs. For SONGS, the Commission has determined, after thorough litigation involving the same parties that are in the current case, additional funding is required for the NDTs to support SNF management costs and has directed the Utilities to deposit litigation proceeds in their NDTs.<sup>72</sup> The handling of DOE litigation proceeds must be guided by SONGS-specific analysis, not by TURN’s speculation as to the circumstances at other nuclear plants.

TURN also claims the Utilities have not established in this proceeding that there will be an additional 12-year delay in the DOE accepting SNF, and that the existence of such a delay was the basis for the Commission’s direction in D.24-08-001 to deposit litigation proceeds in the NDTs.<sup>73</sup> This misstates the Commission’s conclusions in D.24-08-001, which were based on the *uncertainty* surrounding the DOE’s ability to accept SNF, not a conclusion the DOE is certain to be delayed by 12 years:

- “We agree with Joint Applicants and A4NR that the timing for DOE’s removal of SONGS’ spent fuel is very uncertain.”<sup>74</sup>
- “There is a high likelihood that DOE’s delay in beginning spent fuel removal will be further extended in the next NDCTP.”<sup>75</sup>

In light of this uncertainty, the Commission found it reasonable to establish a new funding source to ensure adequate support for SNF management and to protect customers from the potential they would be subject to new collections:

As a result of DOE’s continual delay in removing the spent fuel from SONGS, the forecasted costs have increased because of the need for additional years of spent fuel storage and management at SONGS. Even though the DCE is currently fully funded based on the current estimated fuel removal start date of 2031 and fuel removal completion date of 2051, the current contingency fund is not sufficient to cover any additional delays beyond two more years. Based on

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<sup>72</sup> D.24-08-001, pp. 23-26.

<sup>73</sup> TURN Opening Brief, pp. 21-22.

<sup>74</sup> D.24-08-001, p. 23.

<sup>75</sup> *Id.*

the current contingency funds available, customer contributions will need to be restarted in the next NDCTP if the DOE is to further delay the fuel removal start date, unless litigation proceeds from the DOE are deposited into the NQNDTs to offset the resulting increased costs of spent fuel storage.<sup>76</sup>

The record is replete with evidence that the DOE's ability to accept SNF is just as uncertain today as it was when D.24-08-001 was issued. TURN makes a half-hearted attempt to demonstrate "accelerated progress on the availability of options to begin moving fuel in the 2030s,"<sup>77</sup> but it ignores the substantial record evidence demonstrating a lack of progress.<sup>78</sup>

In short, the two uncertainties that undergirded D.24-08-001—regarding the DOE's ability to begin accepting SNF and the NDTs' ability to support extended SNF management—exist just as strongly as they did in the last NDCTP. Due to the delay in resolving Round 5, the Utilities have not yet been able to deposit any DOE litigation proceeds in their NDTs. In light of this, there is no reasonable basis for revisiting the D.24-08-001 in this proceeding.

**2. TURN's Criticisms of the Utilities' NDT Funding Adequacy Analyses Are Unavailing and Should Be Rejected.**

TURN criticizes the Utilities' NDT funding adequacy analyses, claiming they should have been updated to reflect additional contributions to the non-qualified NDTs made in late 2024 and to reflect potential Round 5 and Round 6 litigation proceeds.<sup>79</sup> This criticism is misplaced for two reasons. First, the Utilities had no obligation to update their analyses to reflect more recent trust balances or hypothetical litigation proceeds. As discussed above and in the Opening Brief, the Utilities proposed to update their NDT funding analyses in supplemental testimony after the Round 5 litigation proceeds were received, but the Commission rejected the proposal. The Commission had good reason to reject the proposal because NDCTPs are filed triennially. A benefit of the regular filings is that the Commission has the opportunity to regularly review updated funding analyses without requiring intra-proceeding updates that can

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<sup>76</sup> D.24-08-001, pp. 23-24.

<sup>77</sup> TURN Opening Brief, p. 23.

<sup>78</sup> See, e.g., Ex. 0201, (A4NR-01).

<sup>79</sup> TURN Opening Brief, pp. 23-26.

disrupt the procedural schedule. In each NDCTP, the Utilities update all known information, so the Commission and intervenors have up to date, accurate adequacy analyses. Had the Utilities updated the analyses during the pendency of this proceeding, it would have provided little benefit for three reasons: (1) none of the DOE litigation proceeds had been received, (2) updated DOE SNF removal assumptions had not been established, and (3) the additional funds added to the NDTs in late 2024 were relatively small.<sup>80</sup> The Utilities will submit another NDCTP with new NDT adequacy analyses (reflecting any DOE litigation proceeds received as well as updated SNF removal assumptions) in less than two years.

The second problem with TURN's criticism is that it is one-sided. TURN sought to have the Utilities perform analyses that incorporated only increased NDT balances, and not the increased costs of SNF management in light of continued DOE delays.<sup>81</sup> Such an analysis would provide minimal useful information as it would not provide an accurate model of trust fund adequacy. The better course of action is to update all available information at the same time, which will occur in the next NDCTP.

### **3. TURN's Flawed Analysis**

TURN conducted its own, flawed, analysis of the NDTs. The Utilities summarized the flaws in their Opening Brief, including (1) TURN's intermingling of funds between the NDTs for the different units; (2) TURN's elimination of all funding margins from its analysis; and (3) TURN's inflation of its dollar amounts to nominal dollars at the end of decommissioning.<sup>82</sup> The Utilities also identified other flaws in TURN's analysis, including its treatment of NEIL

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<sup>80</sup> As TURN notes, a little more than \$28.76 million was added to the non-qualified NDTs on September 20, 2024. TURN Opening Brief, p. 24. This is a relatively small amount in comparison with the estimated remaining decommissioning costs and the NDT balances. See Ex. 0006 (Ex. SCE-06).

<sup>81</sup> See Ex. TURN-304, Bates 026 (TURN data request asking SCE to modify the cash flow modeling for the SONGS 1, 2, and 3 trust funds "[a]ssuming that SCE receives 100% of its pending Round 5 and 6 DOE litigation claims"). Funds were added to the NDTs in late 2024 pursuant to the Settlement Agreement adopted in D.24-08-001.

<sup>82</sup> The Utilities' Opening Brief, pp. 26-30.

dividends. TURN claims that it corrected some of these in errata testimony that was submitted after the hearing was vacated.<sup>83</sup>

a) **Intermingling Funds**

TURN claims the legal prohibition on intermingling funds does not impact its analysis because the prohibition does not extend to intermingling non-qualified NDT funds and there will be sufficient surplus funds in each unit's qualified NDT to support increased SNF management costs at that unit.<sup>84</sup> Both claims assume "surplus" funds will be available; i.e., that existing funding for the various decommissioning categories is sufficient to support each category. Although excess funds from a particular unit's qualified NDT may be used to support SNF management (or any other category of decommissioning costs), it is not prudent to assume such funds will be available. The prudent approach is to ensure that adequate funding exists for each category of decommissioning work, so excess funds from one category do not need to be diverted to support unanticipated higher costs in another category. The Commission has endorsed this prudent approach to decommissioning:

Identifying potential savings in one category [of decommissioning costs] does not necessarily mean that the NDT has excess funds. Under the Decommissioning Act, the Commission must ensure that decommissioning funds are available for the completion of all decommissioning activities. It is consistent with this goal to preserve a perceived surplus in one cost category to offset a potential shortfall in another category.<sup>85</sup>

Additional flaws in TURN's analysis are that it relies on new analysis presented for the first time in its opening brief<sup>86</sup> and that it is presented in nominal 2056 dollars. Consistent with past practice in numerous NDCTPs, the Utilities present SNF management and other decommissioning costs in 2014 dollars and present trust fund analyses in nominal dollars as of

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<sup>83</sup> TURN Opening Brief, pp. 28-29.

<sup>84</sup> TURN Opening Brief, pp. 32-34.

<sup>85</sup> D.21-12-026, pp. 50-51.

<sup>86</sup> *See, e.g.*, TURN Opening Brief, pp. 33, 34, fn. 151 (presenting a table supposedly derived from multiple sources of record evidence). The Utilities have not verified whether the table is accurate.

the date of the analyses.<sup>87</sup> TURN's presentation in 2056 dollars obfuscates any comparison with the Utilities' own analyses.

Finally, TURN's analysis fails because it eliminates any funding margin whatsoever in future years.<sup>88</sup> By eliminating the funding margin, TURN assumes its escalation and rate of return assumptions are near perfect, and that actual returns and escalation will not be lower/higher than forecast. TURN's analysis relies on a razor thin margin – if its assumptions are off by only 1%, TURN's margins disappear and contributions to the NDTs would need to be restarted.<sup>89</sup> The Utilities avoid this flaw by incorporating a reasonable funding margin, or contingency, in their analysis.<sup>90</sup>

**b) Funding Margins**

TURN goes on to criticize the Utilities' characterization of the funding margins in their NDT adequacy analyses as “contingencies.”<sup>91</sup> Treating the margins as contingencies is a prudent approach to financial planning: the “margins are essential to address unanticipated financial events for a project spanning over 30 years and should not be repurposed to cover anticipated DOE-related delays.”<sup>92</sup>

An apt comparison for the funding margins in the NDT adequacy analyses is the variance in returns an individual can expect to receive on their retirement investments. When picking a retirement date, the individual would be prudent to assume the return on investments will not be exactly as forecast. Rather, the prudent investor will assume their rate of return may vary and will choose a retirement date based on the potential lower returns may be realized. TURN rejects this prudent analysis and assumes instead that it has forecast returns and escalation with near perfect acumen. TURN would saddle future generations of customers with the obligation to

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<sup>87</sup> Ex. 0006, Bates Nos. 1078-1081 (Ex. SCE-06, pp. 17-20).

<sup>88</sup> See The Utilities' Opening Brief, pp. 27-29.

<sup>89</sup> The Utilities' Opening Brief, p. 28.

<sup>90</sup> The Utilities' Opening Brief, pp. 28-29.

<sup>91</sup> TURN Opening Brief, pp. 41-42.

<sup>92</sup> Ex. 0009, Bates No. 1160 (Ex. SCE-09, p. 37).

fund the NDTs if its escalation and rate of return assumptions are off by only 1%.<sup>93</sup> In contrast, the Utilities' treatment of the funding margins is prudent, appropriate, and should be affirmed by the Commission.

**c) Cost Escalation**

TURN defends its decision to portray its funding analysis in grossly inflated 2056 dollars on the ground that it is supposedly consistent with the decommissioning costs in the Utilities' cash flow models.<sup>94</sup> This is incorrect. For comparison purposes, it is essential that costs be compared in a common year's dollar value, which is 2014 dollars in the NDCTP. By escalating SNF management costs to 2056 dollars, TURN makes a comparison with other decommissioning costs identified in the evidentiary record impossible to perform without additional financial analysis. TURN's decision to escalate costs means the Commission, and parties, cannot easily determine exactly how much of TURN's calculated surplus amount is attributable to its treatment of the annual funding margins as surpluses rather than to TURN's other modeling choices, such as the inclusion of NEIL dividends. The Utilities' own analysis shows that TURN's surplus amounts are "roughly equivalent" to the funding margins in the Utilities own modeling.<sup>95</sup> This means TURN's analysis depends almost entirely on its imprudent decision to eliminate any contingency and assume escalation and rate of return assumptions over the next 30 years will be accurate. If TURN's assumptions are inaccurate, future generations will pay the cost as they will be required to contribute additional funds to the NDTs. The Commission should reject this outcome and reject TURN's flawed analysis.

TURN inaccurately references the Utilities' rebuttal testimony on trust fund adequacy analysis. TURN states the Utilities make "the astonishing claim that the Commission should ignore future trust fund investment returns when evaluating the adequacy of decommissioning

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<sup>93</sup> The Utilities' Opening Brief, p. 28.

<sup>94</sup> TURN Opening Brief, p. 35.

<sup>95</sup> Ex. 0009, Bates No. 1160 (Ex. SCE-09, p. 36).

funding and instead focus primarily on whether current year trust balances are adequate to cover projected future decommissioning costs.”<sup>96</sup> The Utilities do no such thing. The NDT adequacy analysis the Utilities rely on, presented in their direct testimony, reflects to go cash flows and rate of return and escalation assumptions.<sup>97</sup>

In rebuttal testimony, the Utilities responded to TURN’s direct testimony, in which it claimed the Commission should reject any assessment of NDT adequacy based on a simplistic, point-in-time analysis.<sup>98</sup> The Utilities explained: (1) that a “simplistic comparison of current trust balances to future decommissioning costs that does not use a discounted cash flow analysis, shows that [SCE’s] SONGS 2&3 trusts are underfunded,”<sup>99</sup> and (2) that “this comparison is a valuable tool in assessing the capability of the NDTs to meet their decommissioning obligation, at a given point in time, without introducing the volatility surrounding investment returns and variability in escalation rates of future decommissioning costs.”<sup>100</sup> TURN’s failure to consider this comparison is a further flaw in its analysis.

#### **4. State Policy and Intergenerational Inequity**

TURN claims state policy and intergenerational equity concerns favor providing DOE litigation proceeds to customers.<sup>101</sup> The reverse is true. State policy, as expressed in the Nuclear Facilities Decommissioning Act of 1985 and Commission decisions in multiple NDCTPs, establishes a preference that decommissioning costs be funded by those who received power from the generating station, so that future customers (who are unlikely to have ever received power from the decommissioned plant) do not have to bear the cost of decommissioning.

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<sup>96</sup> TURN Opening Brief, p. 37.

<sup>97</sup> Ex. 0006 (Ex. SCE-06); Ex. 0104 (Ex. SDGE-04).

<sup>98</sup> Ex. 0105, Bates No. 0246 (Ex. SDG&E-05, p. 11).

<sup>99</sup> Ex. 0009, Bates No. 1160 (Ex. SCE-09, p. 36).

<sup>100</sup> Ex. 0105, Bates No. 0246 (Ex. SDG&E-05, p. 11).

<sup>101</sup> TURN Opening Brief, pp. 43-46.

The Commission has considered intergenerational equity issues in prior NDCTPs. In the Utilities' 2015 NDCTP, in response to an argument by TURN that "excess" funds in the NDTs be returned to customers, the Commission held the following:

Given the current uncertainty as to the actual costs to decommissioning each of these facilities we decline to adopt TURN's recommendation at this time. This is particularly true as to the SONGS units, as the land is owned by the U.S. Department of the Navy and it is unclear as to standards that will need to be met prior to license termination and return of the land. To the extent that we risk return of NDTs monies at a later date to the benefit of a future generation, we find that risk more acceptable than the alternative of having the NDTs underfunded.

Decommissioning is too far off in the future to accurately assess the complete cost for decommissioning any one of these units. Additionally, in this case the NDTs are fully funded and the ratepayer contribution is set at \$0.0 therefore no additional cost is currently being incurred by ratepayers. As we said in D.17-05-020, "[t]he Commission takes nuclear decommissioning costs very seriously, and has no intention of cutting corners or underfunding reasonable nuclear decommissioning costs."<sup>102</sup>

The Commission's concerns regarding the uncertainty of the standards that will be met prior to license termination still are still valid.<sup>103</sup> The Commission has applied similar reasoning in other NDCTPs, including the most recent one.<sup>104</sup> The Commission's reasoning in these decisions is consistent with the policy established in the Nuclear Facilities Decommissioning Act of 1985, which is to ensure that customers that received power from nuclear plants adequately fund decommissioning.<sup>105</sup> Consistent with this policy, the Commission should continue to allow

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<sup>102</sup> D.18-11-034, p. 67, *citing* D.14-12-082, p. 132 and D.17-05-020, p. 73.

<sup>103</sup> *E.g.*, Ex. 0004, Bates No. 0322 (Ex. SCE-04, p. 15).

<sup>104</sup> D.24-08-001, FOF 27, p. 33 ("Because of the uncertainties caused by DOE's delays, there is no clear solution that will adequately address the issues of intergenerational inequities.") *See also* D.95-12-055, FOF 78 ("Ratepayers have contributed funds to trusts that the Commission established for the sole purpose of funding nuclear decommissioning costs. The purpose of funding the trusts in advance is to assure that funds are available at the time nuclear decommissioning occurs and to promote intergenerational equity."), D.18-10-010, p. 9 ("In adopting the Decommissioning Act, the Legislature intended to protect ratepayers and shareholders from decommissioning financial risks, as well as to ensure intergenerational equity in that customers who benefitted from the nuclear facilities operation would pay for reasonable decommissioning costs.")

<sup>105</sup> *See* Cal. Pub. Util. Code § 8322(f)(3) (identifying a "principal consideration[]" in establishing a state policy respecting the economic aspects of decommissioning" that payments for decommissioning be structured "so that electric customers and investors are treated equitably over time[.]")

the Utilities to deposit DOE litigation proceeds in their NDTs, thereby protecting future customers from the need to restart contributions to the trusts to support increased SNF management costs attributable to the DOE.

### III.

#### **RESPONSE TO CAL ADVOCATES**

Cal Advocates repeats the arguments made in its direct testimony and does not address the Utilities' rebuttal testimonies. It continues to advocate for adjustments to the SONGS 2&3 DCE, the Palo Verde DCE, and that DOE litigation proceeds be split 50/50 between deposit in the NDTs and return to customers. The Utilities addressed these arguments in their Opening Brief.<sup>106</sup>

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<sup>106</sup> The Utilities' Opening Brief, pp. 15-16, 20-26.

IV.

**CONCLUSION**

The Utilities appreciate the opportunity to submit this Reply Brief. For the reasons stated in this Reply as well as the Opening Brief, the Utilities respectfully request the Commission issue an order approving their Joint Application and granting the approvals requested therein.

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Dated: February 6, 2026